

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

IDA MAE WEBBER

Claimant

VS.

WESTERN PUBLISHING COMPANY

Respondent

AND

LIBERTY MUTUAL INSURANCE COMPANY

Insurance Carrier

AND

KANSAS WORKERS COMPENSATION FUND

Docket No. 183,239

ORDER

Claimant appeals from an Award entered by Administrative Law Judge Shannon S. Krysl dated December 29, 1995. The Appeals Board heard oral argument May 2, 1996.

APPEARANCES

The claimant appeared by her attorney Carlton W. Kennard of Pittsburg, Kansas. The respondent and its insurance company appeared by their attorney M. Doug Bell of Coffeyville, Kansas. The Workers Compensation Fund appeared by their attorney David J. Bideau of Chanute, Kansas.

RECORD AND STIPULATIONS

The Appeals Board has reviewed and considered the record listed in the Award. The Appeals Board has also adopted the stipulations listed in the Award.

ISSUES

The Administrative Law Judge found that claimant failed to establish that she suffered accidental injury arising out of and in the course of her employment. Claimant appeals that finding. Respondent and Kansas Workers Compensation Fund argue first that the Award should be sustained. Respondent contends that if benefits are awarded they should be assessed against the Fund. The Fund denies liability and, in addition, asserts that if an award is made against the Fund, it is entitled to a credit for or offset of payments being made on previous claims under Docket Nos. 160,976 and 160,977.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record and considering the arguments of the parties, the Appeals Board concludes that the Award of December 29, 1995 should be affirmed.

Claimant contends that during the period April 8, 1992 through November 1992 her work activities aggravated a preexisting cervical injury. The preexisting cervical injury was the subject of a workers compensation claim in 1991. After the 1991 claim, respondent returned claimant to work at an accommodated position where claimant argues she suffered the current injury. The accommodated position was a light-duty job as a book cleaner. The accommodated job required claimant to pick up a book from a stack others had piled beside her. She wiped the book off with a cloth and placed it to her immediate right. She also removed price labels with a cleaning solution and a spatula. Claimant performed the work while seated on a stool. She was allowed to change positions if needed. She did minimal bending and infrequent twisting.

Four physicians testified. Two, Dr. William L. Dillon and Dr. P. Brent Koprivica, testified that, in their opinion, claimant suffered no additional permanent injuries while working in the accommodated position. Dr. Edward J. Prostic and Dr. William D. Smith, on the other hand, concluded claimant did suffer some additional permanent injury as a result of the accommodated work.

The Appeals Board finds the opinions of Dr. Koprivica and, more particularly, that of Dr. Dillon to be more persuasive. Dr. Dillon was appointed to conduct an independent medical examination. He had treated claimant and diagnosed cervical disc disease in October of 1991. He considered the condition he found upon examination in 1994 to be a result of the natural progression of the disease. Dr. Koprivica reached a similar conclusion. Dr. Prostic and Dr. Smith, as indicated, concluded that claimant's work did aggravate her preexisting condition. Neither, however, knew much about claimant's job duties when they reached this conclusion.

Finally, the Appeals Board notes that the testimony of the claimant itself does, in part, support the opinions of Dr. Dillon and Dr. Koprivica. When asked in her direct testimony whether the pain was worse, she indicated that it was not, but that it had been worse while she was still working. The Appeals Board finds from this combination of testimony and evidence that claimant's accommodated work produced temporary increase in symptoms but not additional permanent injury, aggravation or exacerbation.

AWARD

WHEREFORE, the Appeals Board finds that the Award of Administrative Law Judge Shannon S. Krysl dated December 29, 1995 should be, and the same is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of May 1996.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Carlton W. Kennard, Pittsburg, KS
M. Doug Bell, Coffeyville, KS
David J. Bideau, Chanute, KS
Shannon S. Krysl, Administrative Law Judge
Philip S. Harness, Director